

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 971 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASHOKBHAI S PATEL

Versus

STATE OF GUJ

Appearance:

MR KJ SHETHNA for Petitioners

MR AJ DESAI ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

Date of decision: 23/10/96

ORAL JUDGEMENT

1. The appellants are the original accused of Sessions Case No. 66 of 1989 of the Court of Sessions Judge of Kheda at Nadiad. The matter came to be tried by the learned Additional Sessions Judge of that court, who by his judgement dated 2.9.92 recorded the finding of

guilt under Section 302 read with Section 114 of the Indian Penal Code.

2. Both the accused appellants are brothers. They are having agricultural fields at Sandheli village, Taluka Thasra, District Kheda. The victim of the crime is one Bhalabhai Dahyabhai Gohil, who is a part of long standing arrangement with the family of the accused and that of the deceased, was working on the field of the accused. On the fateful night, that is on 7.9.88 at about 8.00 p.m. he accompanied accused No.1 for keeping a watch on the field.

3. Next day morning when the deceased was supposed to come back to his residence, he did not and naturally his family members were anxious. Finally information came that a dead body is lying in the field of Nanjibhaia Mistribhai and this resulted into enquiry. Finally the dead body came to be identified and a complaint came to be lodged.

4. The case of the prosecution against the accused is that they had a common design of doing away with the deceased on account of long pending dispute of agricultural land and for that purpose, pesticides having brand name of Democran was used and after administering the said pesticide to the deceased, he was left to die in that field.

5. About the death having been caused by poison of the nature of organo phosphorus compound which is to be found in the said pesticide, there is sufficient evidence and therefore there cannot be any debate on that count. Learned advocate Shri Shethna has therefore not insisted much upon it.

6. However, so far as the aspect of linking the accused appellants with the alleged incident is concerned, Shri Shethna has very strongly urged that there is connection at all linking the accused to the incident. As could be expected it is a case based on circumstantial evidence only.

7. The circumstances which are likely to involve the accused appellants are (i) the accused No.1 had gone to the house of the deceased to call him for the aforesaid work; (2) next day morning again he visited the house of the victim; (3) the bottle of democran was purchased in the name of accused No.2 on account for which payment was made after about three days; (4) bottle of democran was found containing residue of the pesticide in it by the

side of the dead body.

8. With regard to the aforesaid situation, the evidence is that of the mother of the deceased, Nandaben Dahyabhai, P.W.5, Exh.27, the shopkeeper, Harshadkumar Shah, P.W.9, Exh.35 and the bills that he has produced. Brother of the deceased Manibhai Dahyabhai generally supports the prosecution case.

9. However, the all important aspect of making it definite and particularly bringing about material on record which would make all the subsisting circumstances on record to lead to only one conclusion, namely, that of guilt of the accused is absent. Shri Shethna submits that there is wide gap between suspicion and certainty.

10. On careful analysis of the deposition of the witnesses as also the other material on record which we have perused from the original file of the trial court we agree with the learned advocate Shri Shethna that there is a vast gap between the two.

11. Now, if we critically analyse the evidence of said mother of the deceased, it comes only to this that Ashokbhai had come to call the deceased on the previous evening and next morning he had come to enquire about him. It has come on record that Ashokbhai is engaged in diamond business at Surat and is not actively associated with agricultural operations of the family. It is the accused No.2 and some other brothers of the accused who are dealing with it.

12. So far as the purchase of pesticide is concerned, said Harshadkumar Shah exh. 35 has categorically stated that accused No.1 who is known to him had not come personally to buy it. A person had come giving his name and therefore it was assumed that the person who had so come was actually the servant of accused No.1. Likewise the purchase which was made on credit in this manner and amount of Rs.150 was paid back for this purpose within five days or so, again by an unknown person.

13. The net result therefore is that on the one hand there is proof of purchase of democran and on the other there is incident of death of Bhalabhai. The only link so far to be found for implicating the accused is that accused No.1 had come to the house of the deceased.

14. Though bottle of democran was found lying near the dead body, no attempt was made by the prosecuting agency to establish conclusively that this was the bottle

which was in fact purchased and sold in the manner stated by the said witness, to the accused No.2 through his servant. No attempt whatsoever has been made even to gather final proof from the said bottle and thereby trying to establish that it was the bottle used for the aforesaid purpose by either or both the accused.

15. So far as the evidence relating to Section 114 that is aiding and abetting is concerned, there is also the deposition of medical officer Dr.Vyas. This is mainly on the fact that democran is such a pesticide repulsive in smell and awful in taste that no person in his right mind would take it voluntarily. Either it would be taken by a person minded to commit suicide or would be forcibly administered and for this purpose more than one person is required.

16. We find after going through the record and after hearing the learned Additional Public Prosecutor Shri AJ Desai that the commission is entirely based on this slender piece of evidence. At best it can be said that there might be suspicion with regard to involvement of the accused either of them or both but suspicion cannot take the place of proof. May must be brought to the level of must for which there has to be a clinching evidence. In absence of it, under the aforesaid circumstances, it is obvious that the appellants will get the benefit of doubt.

17. Accordingly, the appeal is allowed. The order of conviction is set aside. The accused appellant are given benefit of doubt. They are ordered to be released forthwith, if not required for any other purpose. Fine if paid is ordered to be refunded. Direct service permitted.

(devu)